

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONALD A. KATZ TECHNOLOGY
LICENSING, L.P.,

Plaintiff,

v.

C.A. No. 06-544 (GMS)

TD BANKNORTH INC., et al.,

Defendants.

**DEFENDANTS DILLARD'S, INC. AND DILLARD INVESTMENT CO., INC.'S
MOTION TO STAY ACTION PENDING THE UNITED STATES PATENT AND
TRADEMARK OFFICE'S REEXAMINATION OF PLAINTIFF'S PATENTS**

Defendants Dillard's, Inc. and Dillard Investment Co, Inc. (collectively, "Defendants" or "Dillard's") hereby respectfully move the Court to stay this action in its entirety pending the reexamination proceedings that are currently pending before the United States Patent and Trademark Office relating to a number of the patents that Plaintiff Ronald A. Katz Technology Licensing, L.P. ("RAKTL" or "Plaintiff") has asserted against Dillard's in this action. By this Motion, Defendants incorporate herein by reference the "Motion to Stay" filed by the Qwest Defendants in Civil Action No. 06-546 (GMS) on Monday, December 18, 2006, and the memorandum and declaration filed in support thereof. (C.A. No. 06-546, D.I. 80-82).

On September 1, 2006, Plaintiff filed five actions in this District¹ accusing a total of ninety-five defendants of infringing one or more of twenty-six United States patents.² Plaintiff has asserted nineteen of the twenty-six patents against Dillard's in this action.³

Currently, eleven RAKTL patents are involved in reexamination proceedings before the United States Patent and Trademark Office.⁴ Of these eleven patents, six patents that RAKTL has asserted against Dillard's are involved in reexamination proceedings before the United States

¹ *Ronald A. Katz Technology Licensing, L.P. v. Reliant Energy, Inc., et al.* (Civil Action No. 1:06-cv-00543), *Ronald A. Katz Technology Licensing, L.P. v. TD Banknorth, Inc., et al.* (Civil Action No. 1:06-cv-00544), *Ronald A. Katz Technology Licensing, L.P. v. Ahold USA, Inc., et al.* (Civil Action No. 1:06-cv-0545), *Ronald A. Katz Technology Licensing, L.P. v. Time Warner Cable, Inc., et al.* (Civil Action No. 1:06-cv-0546), and *Ronald A. Katz Technology Licensing, L.P. v. American International Group, Inc., et al.* (Civil Action No. 1:06cv-00547).

² The twenty-six asserted patents are United States Patent Nos. 4,792,968 ("the '968 patent"); 4,930,150 ("the '150 patent"); 4,939,773 ("the '773 patent"); 4,987,590 ("the '590 patent"); 5,128,984 ("the '984 patent"); 5,251,252 ("the '252 patent"); 5,297,197 ("the '197 patent"); 5,351,285 ("the '285 patent"); 5,442,688 ("the '688 patent"); 5,684,863 ("the '863 patent"); 5,787,156 ("the '156 patent"); 5,815,551 ("the '551 patent"); 5,828,734 ("the '734 patent"); 5,835,576 ("the '576 patent"); 5,898,762 ("the '762 patent"); 5,917,893 ("the '893 patent"); 5,974,120 ("the '120 patent"); 6,035,021 ("the '021 patent"); 6,148,065 ("the '065 patent"); 6,335,965 ("the '965 patent"); 6,349,134 ("the '134 patent"); 6,424,703 ("the '703 patent"); 6,434,223 ("the '223 patent"); 6,449,346 ("the '346 patent"); 6,512,415 ("the '415 patent"); and 6,678,360 ("the '360 patent") (collectively, "the asserted patents").

³ The nineteen patents asserted against the defendants in this case include the '968 patent, the '150 patent, the '984 patent, the '252 patent, the '285 patent, the '863 patent, the '551 patent, the '734 patent, the '762 patent, the '893 patent, the '120 patent, the '021 patent, the '065 patent, the '965 patent, the '134 patent, the '703 patent, the '223 patent, the '415 patent, and the '360 patent.

⁴ The ten patents currently involved in reexamination proceedings include United States Patent Nos.: 5,255,309, 5,259,023, 5,351,285, 5,561,707, 5,684,863, 5,787,156, 5,815,551, 5,828,734, 5,974,120, 6,292,547, and 6,434,223. In addition, a request for reexamination of United States Patent Nos. 5,128,984 has been submitted to the United States Patent and Trademark Office, but the PTO has not yet acted on the request.

Patent and Trademark Office and a request for reexamination has been submitted for an additional patent that has also been asserted against Dillard's. Additionally, since many of Plaintiff RAKTL's patents are related to each other, and involve very similar technology and issues, it is highly likely that other patents that RAKTL has asserted will be materially affected by the results of the currently pending reexamination proceedings.

For all the reasons cited in the Qwest Defendants' "Motion to Stay" and supporting memorandum and declaration (C.A. No 06-546, D.I. 80-82), which are incorporated herein by reference, Dillard's respectfully requests that the Court stay this action in its entirety pending the completion of all of the pending reexamination proceedings before the United States Patent and Trademark Office involving Plaintiff's United States patents that have been asserted in this action as well as other related but unasserted patents. Specifically, this Court should stay this action in its entirety because: (1) Plaintiff will not be prejudiced, much less unduly prejudiced by the stay of this action; (2) a stay will indisputably simplify the proceedings as the U.S. Patent Office will make a determination as to the patentability of the numerous patents in reexamination – which are in issue in this case; (3) a stay will plainly conserve this Court's and the parties' resources relating to the investigation, discovery, analysis, and construction of patent claims that are likely to be held invalid, amended or cancelled during reexamination; and (4) this action has not progressed past the initial pleading stage, discovery has not yet begun, and no trial date has been set.

For all of these reasons, Dillard's respectfully requests that the Court stay this action in its entirety pending the completion of all of the reexamination proceedings by the United States Patent and Trademark Office involving Plaintiff's United States patents that have been asserted

in this action as well as other related but unasserted patents. A proposed form of order is attached hereto as Exhibit A.

Plaintiff's counsel has been contacted regarding this motion, and counsel has indicated that Plaintiff is opposed to the requested stay.

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Dated: December 19, 2006


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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONALD A. KATZ TECHNOLOGY
LICENSING, L.P.,

Plaintiff,

$$V_2$$

TD BANKNORTH INC., et al.,

Defendants..

C.A. No 06-544 (GMS)

ORDER

On this ____ day of _____, 2007, came for consideration Defendants Dillard's, Inc. and Dillard Investment Co, Inc.'s Motion to Stay Action Pending the United States Patent and Trademark Office's Reexamination of Plaintiff's Patents (the "Motion"). Having reviewed the parties' positions with respect to the Motion, the Court is of the opinion that the Motion should be granted and this case stayed at least until the United States Patent and Trademark Office's reexamination of patents assigned to Ronald A. Katz Technology Licensing L.P. is complete.

IT IS THEREFORE ORDERED this _____ day of _____, 2007 that Defendant Defendants Dillard's, Inc. and Dillard Investment Co, Inc.'s Motion to Stay is GRANTED. Accordingly, all aspects of this case are stayed pending further order of this Court.

THE HONORABLE GREGORY M. SLEET
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2006, I caused to be served by hand delivery the foregoing document and electronically filed the same with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

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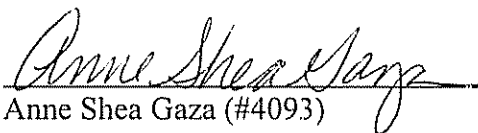
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